IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.315/2004

Zahid Noor S/o Ahmed Noor
Versus
State of Rajasthan through Public Prosecutor

Date of Judgment :::: 25th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Shailesh Prakash Sharma, Counsel for accused-appellant
Shri B.N. Sandu, P.P., for the State

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By the Court:-

With the consent of the learned counsel for both the parties, the appeal is heard finally and being disposed of by this judgment.

The only contention raised on behalf of the appellant by his learned counsel Shri Shailesh Prakash Sharma is that looking to the quantity of the contraband recovered in the present case from the possession of the accused-appellant, the sentence of imprisonment awarded by the trial court is excessive and the same is liable to be reduced.

The Special Judge. N.D.P.S. Cases, Gangapur City, vide its judgment and order dated 16.12.2003, in Special Case No.3/2003, convicted the accused-appellant under Section 8/21 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 (for short, 'NDPS Act') and sentenced him to undergo 7 years rigorous imprisonment and a fine of rupees one lac; in default of payment of fine, to further undergo one-and-half-year additional rigorous imprisonment.

The learned counsel for the appellant has not challenged the order of conviction passed against the appellant by the trial court, therefore, it is not necessary to refer and discuss the facts of the case, in detail.

The charge against the appellant was that contraband i.e. smack weighing 90 gram was recovered from his possession. Shri Shailesh Prakash Sharma, learned counsel for the appellant, contended that the offence in the present case was committed on 1st February, 2002, whereas the Parliament had made an amendment in the NDPS Act and in exercise of the powers conferred by clauses (viia) and (xxiiia) of Section 2 of the NDPS Act, a Notification No.S.O.1055 (E), Dated 19.10.2001 was issued, which came into force with effect from 2nd October, 2001, whereby a Table was appended with the NDPS Act, specifying thereunder the small and commercial quantity of contraband. Item No.56 relates to heroin/smack (Diacetylmorphine). According to this Notification, the small quantity has been notified as 5 gram and the

commercial quantity as 250 gram. As per clause (a) of Section 21 of the NDPS Act, the maximum sentence prescribed for small quantity is six months rigorous imprisonment, whereas clause (b) thereof provides that where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, the accused shall be punished for a term which may extend to ten years and with fine which may extend to one lakh rupees.

The learned counsel for the appellant, therefore, contended that after considering all the facts and circumstances of the present case as well as the quantity of contraband recovered from the possession of the appellant, the sentence of imprisonment may be reduced to a period of four-and-half year with fine of Rs.1,00,000/- and in default of payment of fine to further undergo six months rigorous imprisonment.

The learned counsel for the appellant further submits that the appellant himself has also given in writing about the aforesaid imprisonment and fine, and the same has been placed on the record by him in the file of second application for suspension of sentence, on 23.5.2007.

The second application for suspension of sentence was listed before this Court on 22.5.2007 and

the learned Public Prosecutor sought two days time to ascertain as to whether any other case is pending against the appellant, or not. The learned Public Prosecutor contended that, as per his instructions, no other case is pending against the appellant under the provisions of NDPS Act, but there were three other cases lodged against the appellant in respect of other offences, but he has already completed the sentence of imprisonment awarded against him in those cases.

After considering all the facts and circumstances of the present case, amendment made by Parliament in NDPS Act with effect from 2.10.2001 and looking to the the quantity of contraband recovered from the possession of the appellant, I think it fit and proper that ends of justice will meet in case the sentence of imprisonment awarded by the trial court against the appellant is reduced from seven years to four-and-half-year RI and fine of Rs.1,00,000/-; in default of payment of fine, to further undergo six months RI.

Consequently, the appeal is partly allowed. The order of conviction passed by the trial court against the appellant is upheld as not challenged by learned counsel for the appellant, but the order of the trial court in respect of sentence is modified and in stead of 7 years RI, he is sentenced to four years and six months RI and a fine of Rs.1,00,000/-; in default of payment of fine, to further undergo six months RI.

(Narendra Kumar Jain) J.

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